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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,947	03/24/2004	Marc Radow	501120-015	4071

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Marc Radow  
1900 Joy Lake Road  
Reno, NV 89511

EXAMINER
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WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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04/29/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,947	<b>Applicant(s)</b> RADOW, MARC	
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-39,41-45,47 and 48 is/are pending in the application.
- 4a) Of the above claim(s) 18,34,36-38,42 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16,17,19-33,35,39,41,44,45,47, and 48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 1794

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

In regard to claim 16, Albert discloses a composition comprising a liquid sweetener such as corn syrup and water, wherein the composition would be capable of being applied to a rim of a beverage container. Although the surfactant and viscosity/texture modifier are both listed as being present in the amount of 0%, and thus not present, Albert also discloses the composition can include a polysaccharide, such as a gum, which would be a viscosity/texture modifier. In regard to claims 20-22, the particular viscosity selected is seen to have been an obvious result effective variable, routinely determinable. In regard to claim 19, which recites corn syrup and sugar, since Albert discloses using corn syrup and sugar, to employ both as both binders and sweeteners is seen to have been an obvious result effective variable. In regard to claim 32, Albert discloses gum.

Claims 16,17,19-33,35,39,41,44,45,47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albert (2004/0033293) in view of Luhadiya (2002/0187220), or vice versa, i.e., Luhadiya et al ('220) in view of Albert('293), both further in view of Chen et al (2004/0109932), and further in view of Maegli (5,298,268), Schleider (WO 99/09871), Emig 2004/0005385), Rhode et al (2002/0062741), Fiorella (3,824,322), Holloway et al (4,828,858), and Hoover (4,647,463), essentially for the reasons given in the Office action mailed 8/18/08.

It is noted that the previous rejection employing Chen et al ('932) as the primary reference over the same group of references has been withdrawn.

In regard to claim 16, and as noted previously, Albert discloses a composition that would be capable of being used for applying a film to a rim of a beverage container, wherein the composition functions as an adhesive and can include, for example, a liquid sweetener such as corn syrup or sucrose and maltodextrin, which are notoriously well known as inherently having adhesive properties, and have been used in that role in the prior art, and is thus readable on "an adhesive". Albert discloses that the composition can further include water, and a gum, which gum would inherently act as a viscosity/texture modifier. Albert discloses that the composition can function as an edible adhesive composition that can be applied to an object such as a food product, so that an edible particulate material can then be applied to the edible adhesive coating that is already applied on the food product. Thus, Albert discloses edible, adhesive coating compositions for application to a surface for receiving particulate material which is applicant's generic intended use as well. Claim 16 now recites that the edible composition also contains a wetting agent instead of the originally claimed surfactant. There appears to be only one use of the term "wetting" in the specification (i.e., "wetting solution" – p.5, para. 3) with all other references being to "surfactant". Therefore, the specification is construed to disclose that the composition can include a surfactant, which inherently has wetting properties. Luhadiya, also addresses the problem, addressed by both applicant and Albert, of adhering particulate material to a solid (edible) substrate by first coating the solid substrate with an (edible) adhesive, discloses

Art Unit: 1794

it was conventional in the art to include a surfactant in the edible, adhesive coating.

Luhadiya discloses an edible particulate adhesive; i.e., an edible adhesive to be first applied to a product substrate, which applied edible adhesive then receives edible particulates, such that the edible adhesive adheres the edible particulates to the coated product substrate. It is noted that Ludhadiya employs modified starches and maltodextrin as the main "adhesive" component, rather than the sweeteners which had been previously recited in claim 16, but present, e.g., in claim 17 plus. However, Ludhadiya does not have to disclose sweeteners as the main "adhesive" component for the rejection to be proper, since Albert already teaches applicant's "adhesive" component. Ludhadiya also discloses the use of gums (the recited viscosity/texture modifiers) within the recited range and surfactants/wetting agents within the recited range. Chen et al discloses an edible coating composition for application to a straw. The coating composition is applied in molten form and is intended to be used as a flavoring, but Chen et al also discloses that the coating composition, after application, at least initially, has adhesive properties and can thus be used to apply a particulate substance to the coating on the straw. Chen et al discloses the addition of a surface tension reducing agent (i.e., a wetting agent/ surfactant), to the composition, as well as a plasticizer (propylene glycol, which also has surfactant properties), water and gums. Thus, Chen et al teaches it was conventional to add a surface tension reducing agent, wetting agent to a composition that is intended to be used to coat a substrate. Clearly, the function of the agent is to allow the composition to more efficiently coat the substrate. Chen et al does not have to teach the particular adhesive component (note

Art Unit: 1794

that claim 16 doesn't even recite one) for the rejection to be proper since the art taken as a whole, including Albert, discloses it was notoriously well known to employ all types of ingredients with adhesive properties in an adhesive coating composition, including corn syrup. To therefore modify Albert and add a conventional surfactant to the edible, adhesive coating composition for its art recognized and applicants intended function, when it was conventional to have added surfactants to an edible, adhesive coating composition would therefore have been obvious. Claim 16, as well as the other additional independent claims 22,26, 33, and 39, presumably, in an attempt to patentably distinguish from the art taken as a whole, now recite narrower ranges of "adhesive" (formerly sweetener) that are intended to be less than that specifically disclosed by Albert. However, when employing specific numbers, Albert discloses the sugar can be about 35% (and the polysaccharides, such as gums, applicant's disclosed and recited "viscosity/texture modifier, can be about 5%). Note, too, that Albert discloses on page 2, column 2, that the ranges of adhesive/sweetener are only "preferred" ranges. There is nothing in Albert to indicate the specific compounds would not be able to function at lower ranges of adhesive/sweetener. Therefore, Albert certainly does not teach away from the recited ranges, and, as noted previously, since the compounds are employed for their art recognized and applicant's intended function, the particular concentrations of all of the ingredients employed are seen to have been obvious result effective variables, routinely determinable. Finally, claim 16 and the other independent claims recite the claims consist essentially of the ingredients and their respective amounts. The recited "consisting essentially" language has been taken into

Art Unit: 1794

account in reviewing for patentability, and, as such, falls short. In view of the art taken as a whole, one of ordinary skill in the art would have been fairly lead to employ the recited ingredients in the recited amounts, since the art taken as a whole fairly teaches these were conventional ingredients which have been employed for their art recognized and intended function without any new or unexpected result derivable therefrom. As noted previously, Maegli, Schleider, Emig, Rohde et al, Fiorella, Holloway et al, and Hoover are all relied on as further evidence that all of the recited ingredients are notoriously conventional ingredients in edible, adhesive coating compositions, and it would therefore have been an obvious result effective variable to routinely manipulate the ingredients to achieve the properties desired for the particular environment. Maegli also discloses an edible particulate adhesive; i.e., an edible adhesive to be first applied to a product substrate, which applied edible adhesive then receives edible particulates, such that the edible adhesive adheres the edible particulates to the coated product substrate. Maegli also discloses adjusting the viscosity and surface tension of the composition, the use of a polyhydric alcohol, which is a known surfactant, and is used in the recited range, and that the particulate seasoning should not get wet. Maegli further discloses the use of a monosaccharide in amounts varying from 5-70% (col. 12line 50plus). Although Maegli's preference is to employ a molten composition, it is not necessary for Maegli to disclose a non-molten composition (although Maegli's discussion of the prior art does disclose non-molten compositions) since the art taken as a whole, including Albert, teach non-molten compositions. Note that Maegli teaches wide ranges for the ingredients of his adhesive composition. Schleider discloses that

Art Unit: 1794

starches and sugars, including corn syrup, are known adhesive coating materials which have been used as part of an adhesive coating composition to coat a substrate which is to receive edible particles which particles adhere to the edible adhesive composition.

Although it is not necessary, for the rejection, how Schleider applies the adhesive coating, it is noted that the coating composition is dissolvable in cold liquids. Emig discloses polysaccharide edible, adhesive coating compositions for, with or without vegetable oils, for receiving particulate material. Rohde et al discloses starch based edible, adhesive coating compositions. Fiorella discloses an adhesive coating composition that can have a flavoring material deposited thereon, which composition can include sugars (e.g., corn syrups), gums, as well as plasticizers and solvents (such as water). Note that the corn syrup can be present in a wide range (10-70%). Holloway et al is yet another reference that discloses an edible adhesive composition that is to be first applied to a product substrate, which applied edible adhesive would then receive edible particulates, such that the edible adhesive adheres the edible particulates to the coated product substrate. Holloway et al discloses the edible adhesive coating composition can contain corn syrup, sucrose, honey, water and gums. Note that, like most of the art applied, Holloway et al discloses wide ranges of amounts of the ingredients. Note, for example, that Holloway et al discloses that the total amount of all of the sugars can be 30% (e.g., the col. 3, upper table). Hoover is only being relied on as further evidence of sugar based edible, adhesive coating compositions. All of the remaining claims have been fully and carefully considered but are found to have been unpatentable for the reasons given above. That is, the art taken as a whole clearly



Art Unit: 1794

evidences the fact that it was well established to provide compositions for film forming (and binding particulates thereto), i.e., edible, adhesive coating compositions, wherein the compositions were not just water or a juice (as applicant has disclosed), but ingredients that were more viscous and binding than just water or naturally occurring liquids per se, and that applicants recited ingredients are all notoriously well known ingredients in film/adhesive/bonding compositions (i.e. edible, adhesive coating compositions) and that applicants ingredients are being employed for their well known and intended function. One of ordinary skill in the art would be fairly led to manipulate the ingredients to achieve the results desired.

Similarly, employing Luhadiya as the primary reference, claim 16 differs from Luhadiya in employing modified starch as a main ingredient whereas the claim recites adhesive (and then a sweetener in later claims). The particular conventional edible adhesive one chooses to have employed is seen to have been an obvious result effective variable, routinely determinable. As evidenced by Albert, sweeteners, are, of course, notoriously conventional ingredients in edible, adhesive coating compositions. To modify Luhadiya and substitute one conventional main ingredient for another conventional main ingredient, wherein they are both being employed in an edible, adhesive coating composition for their tackiness would have been obvious.

All of applicants remarks as well as the Declaration of Grady, filed together on 2/18/09, have both been fully and carefully considered but are not found to be convincing, essentially for the reasons fully and clearly detailed above. The detailed rejection above has been drafted to address the points raised in both the urgings and

Art Unit: 1794

the Declaration. Also, as noted previously, every one of applicants recited ingredients have been shown by the art taken as a whole to have been used in edible, adhesive coating compositions. The art taken as a whole also discloses that the ingredients have been used in edible, adhesive coating compositions in the recited ranges. It has been urged that the composition has specific use in the context of applying an edible, adhesive coating composition to a glass. In response, it is noted that the claims recite a composition. They do not recite a method of coating a glass nor do they recited a coated glass. Therefore, the urging is directed to an intended use. The composition as claimed could be used to coat any product, edible or inedible, as would the edible, adhesive coating compositions of the references. Any urging relative to the intended use of the composition is also not convincing since the issue would be similar whether one is coating an edible or inedible. For example, drippiness or running of the coating composition would be a negative if one were coating edible products or inedible products. Note, too, that the art taken as a whole also discloses edible, adhesive coating compositions for use in a method for coating inedibles such as a straw. Note, too, that any edible, adhesive coating composition that contains polysaccharides such as gums will inherently be more viscous than one that does not contain polysaccharides.

In summary, applicant has combined a number of conventional ingredients, known in the food art, and particularly in the coating art, employed them for their well known and intended function, and achieved no new or unexpected result therefrom.

Reference is also made to *In re Levin*, 84USPQ232, wherein the Court stated on page 234 as follows:

This Court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A.(Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.* , 33 C.C.P.A (patents) 1144, 156 F. 2d 189, 70 USPQ 221.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1794

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794